ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN. Docket No. 90-314 ET Docket No. 92-100
	)	

COMMENTS OF SPRINT

Marybeth M. Banks
Its Analyst

Leon M. Kestenbaum
Phyllis A. Whitten
1850 M Street, N.W., Suite 1110
Washington, D.C. 20036
(202) 857-1030
Its Attorneys

November 9, 1992

TABLE OF CONTENTS

SUMMARY

Sprint supports the Commission's proposal to allocate spectrum for personal communications services ("PCS"), and encourages the Commission to move forward quickly to bring PCS to the public. PCS service areas should be consistent with cellular service areas. Smaller service areas may permit broader participation in the PCS market, promote greater diversity and innovation, and minimize certain transaction costs. The Commission should rely upon market forces to drive service areas to the most efficient size. Award of a "national license" is particularly inappropriate. Although the LATA and MTA options are not as restrictive as nationwide licenses, both will also limit the number of potential competitors.

Eligibility requirements for PCS licenses should be designed to ensure wide participation in delivery of personal communications services. Sprint recommends that the Commission adopt a rule allowing non-controlling minority interests of up to 30 percent. By allowing PCS applications from cellular providers whose interests in particular markets do not represent a threat to competition, the Commission will establish an appropriate public interest balance for PCS eligibility. If a larger service area than MSA/RSA is adopted, the Commission should establish eligibility for cellular providers by determining the percentage of POPs within a total service area served by the cellular carrier, and then multiplying that percentage by the ownership percentage the cellular provider holds in the cellular licenses that overlap the PCS service area. If the proportional market

interest is less than the 30 percent standard, the cellular provider should be eligible to apply for that PCS market.

Sprint supports the Commission's proposed allocation of 90 MHz of spectrum for three licensees. The Commission should not allocate less than 30 MHz per license. No entity should hold more than one PCS license per PCS market area.

Comparative hearings for PCS would be too costly, and would result in significant delays for implementing service. Competitive bidding also would create delays. Sprint supports a qualified lottery as the better approach for licensing PCS. Relatively short filing windows with reasonable notice, reasonable application fees, and clear filing instructions also could reduce confusion and produce a higher proportion of serious applicants. The Commission should conduct only one lottery for each market area, and designate tentative selectees equal to the number of licenses available in each market. Sprint does not support "resale" limitations.

The Commission should permit applications by carriers currently offering common carrier services, or their affiliates, irrespective of the regulatory classification of the service. Prior restrictions on wireline eligibility to provide SMR service should have no relationship to LEC eligibility for PCS service. Sprint encourages the Commission to revise its Part 90 rules which restrict wireline eligibility for SMR service.

PCS licensees should have a federally protected right to interconnect with the public switched network on a non-discriminatory basis. Sprint's comments regarding technical standards are contained in Appendix A.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314 ET Docket No. 92-100
	)	
	)	

COMMENTS OF SPRINT

Sprint Corporation ("Sprint"), on behalf of Sprint Communications Company L.P. and the United Telephone Companies, hereby respectfully submits its comments in response to the Notice of Proposed Rulemaking and Tentative Decision, FCC 92-333, released August 14, 1992 in the above-captioned docket ("NPRM").

I. INTRODUCTION.

Sprint supports the Commission's proposal to allocate spectrum for personal communications services ("PCS"). Additional spectrum for use in connection with advanced communications services is required to meet expected current and future demand for wireless services, to introduce a wide range of advanced new services, and to provide competitive alternatives to current services.

The Commission said in its Policy Statement and Order[1] that it intends to broadly define PCS and adopt regulations that would

[1]Gen Dkt. No. 90-314, FCC Rcd 6601 (1991), see also NPRM at para. 12, p. 7.

promote rapid development of PCS, encourage flexibility in adoption of technologies and services, and promote competition in PCS and telecommunications generally (at para. 12). Sprint supports those goals, and encourages the Commission to move forward quickly to bring to the public the benefits of added competition and innovation in the provision of wireless service offerings.

Cellular telephone service brought the experience of mobile communications to a much wider segment of the American public than was possible with pre-existing technology. Cellular service is evolving, and certainly cellular providers can be expected to serve larger markets and provide more diverse services in the future. However, as the Commission recognizes, cellular providers will not be able to meet all future demand for mobile and/or portable services.[2] The Commission is correct both in establishing and encouraging alternative service offerings, and in adopting a flexible approach when considering the numerous technical and regulatory issues that ultimately will need to be resolved in launching these new services.

II. PCS SERVICE DEFINITION.

The NPRM defines PCS "as a family of mobile or portable radio communications services which could provide services to

---

[2] See NPRM at para. 25. "While cellular and specialized mobile radio services will be able to provide some of the new communications requirements within their currently allocated spectrum, they cannot meet the full range of demand for PCS within a competitive framework."

individuals and businesses and be integrated with a variety of competing networks" (at para. 29). Sprint agrees that PCS will use radio spectrum to provide new and innovative services which employ the flexibility radio affords.

It is also apparent that the Commission recognizes that services will increasingly be identified with individuals, rather than locations (at para. 25), and that PCS may be used flexibly, and sometimes interchangeably, with services that in the past might have been provided by traditional exchange carriers. Flexible service offerings will promote innovation and lower prices to consumers.

III. THE PCS SERVICE AREAS SHOULD BE CONSISTENT WITH THE CELLULAR SERVICE AREAS TO ENCOURAGE BROAD MARKET PARTICIPATION.

Definition of the PCS service areas is a critical component of the establishment of PCS as it will affect the number and size of firms that will be able to compete to provide service. In its NPRM, the Commission sets forth possible benefits of larger and smaller service areas and tentatively concludes that service areas should be larger than those awarded for cellular service. Sprint disagrees with this conclusion and believes that the PCS service areas should be consistent with cellular service areas in order to encourage broad participation in the PCS market.

The Commission correctly recognizes that smaller areas have a number of advantages over larger areas (at para. 59). First, smaller service areas "may permit a broader participation by firms of all sizes in the PCS market" (id.). As the Commission points out, some potential competitors "may be interested in serving only their local areas" (id.) where they have first-hand

knowledge of the communities, businesses and government. Other firms, which may not have the resources initially to compete in larger service areas, may enter the market on a small scale with plans to grow in the future. By defining smaller service areas, the Commission will afford more firms the opportunity to compete and thereby achieve its fundamental goal to "promote competition in PCS" (at para. 12).

Further, smaller firms that apply for licenses to serve "their local areas" (at para. 59) will have a greater incentive to introduce service quickly to their areas than will larger firms obtaining licenses for larger service areas. Such larger firms will probably build facilities and provide service in the more densely populated areas first and then gradually expand outward. Thus, smaller service areas will likely lead to more rapid universal deployment of PCS.

Second, the Commission suggests that another benefit of smaller service areas and "broader participation" may be "greater diversity and degree of technical service innovation" and that "diversity may be an important benefit during the initial implementation of PCS when the market is still being defined" (id.). As firms compete to bring PCS to market, there will be substantial innovation which will produce a wide variety of products and cost-saving technologies. By facilitating entry into the market, the Commission will enhance product diversity and innovation.

Finally, as the Commission notes, certain transaction costs may be saved by smaller service areas. Smaller firms may provide PCS to smaller areas which are not attractive to larger firms. With larger service areas, however, the larger firms may elect to

"subcontract" service to smaller areas. The transaction costs associated with "subcontracting," which must ultimately be borne by the consumers, might be avoided with smaller service areas.

The Commission also considers potential benefits of larger service areas and tentatively finds that such benefits outweigh those of the smaller service areas. According to the Commission, economies of scale and scope, which have resulted in consolidation of the cellular industry, "may exist in PCS" (at para. 58, underscoring added). Although there will obviously be a substantial overlap in both the characteristics and services provided under existing cellular arrangements and the new PCS offerings, there are also likely to be differences. It may be that PCS will provide new, innovative services which are different than existing or future cellular services, and that the development of the PCS market will not be identical to that of the cellular market. As discussed below, each of the benefits of consolidation identified by the Commission (in para. 58 of the NPRM) may not be relevant, as the Commission appears to recognize, to the PCS market.

- The Commission states that

  > "[t]he same economies that are driving cellular towards larger service areas may exist in PCS..." and that "licensing larger PCS service areas at the outset may minimize unproductive regulatory and transaction costs and associated delay" (id., underscoring added).

Although PCS is, of course, likely to compete with existing cellular service, PCS is not a cellular clone. The different propagation characteristics of radio waves at the higher 2 GHz frequency allocated to PCS service are likely to affect the

economics of providing such service. For example, because PCS is to be provided at a much higher frequency than cellular, PCS transmission will be vulnerable to interference, PCS transmission will not "travel" as far as cellular transmission (assuming the same power, antenna size, etc.), and PCS "cells" will, therefore, almost certainly be smaller than the existing cellular cells. With smaller cells, the ideal PCS serving area may be quite different, and correspondingly smaller, than the cellular service areas that have evolved. There is obviously a need for the Commission to act cautiously in making any assumptions as to the ideal PCS serving area and such need for caution, as explained below, militates in favor of smaller service areas.

- The Commission states that

  > "[l]arge PCS service areas...may facilitate regional and nationwide roaming; ...reduce the cost of interference coordination between PCS licensees; and simplify the coordination of technical standards" (id., underscoring added).

In adopting regional and national roaming and national standards for the cellular industry, the size of the service area was not a decisive factor. The same will likely hold true for PCS. Further, industry standards bodies and potential PCS licensees have already begun addressing interference coordination, roaming and technical standards issues. If there is an advantage to larger cells in deciding these issues (and Sprint does not concede this point), such advantage can be overcome.

- The Commission states that

  > "[l]arger PCS service areas also may...allow licensees to tailor their systems to the natural geographic dimensions of the PCS market..." (id., underscoring added).

Smaller service areas can be molded to fit the "natural geographic dimensions" either through enlargement of the defined service areas or through consolidation. It will be difficult, if not impossible, to trim down larger service areas to "tailor" them to a particular area. The Commission should therefore start with smaller areas. The logic of the situation is similar to adding "salt to taste." There is a need for caution. Additional salt can always be added, but once food is overseasoned there is generally no remedy. In the case of determining an ideal PCS service area, there is a similar need for caution. If the service area is too small, consolidation will normally take place and an ideal scale will be reached in due course, even if some expenditures are required to obtain such ideal scale. On the other hand, if the service areas are initially set at a size above ideal scale, it is unlikely that the service area will then be subdivided. The licensee has no incentive to give away part of its authorized territory to another licensee.

In a market as competitive as the PCS market is likely to be, the Commission should rely upon market forces to drive the service area to the most efficient size. Smaller service areas will allow such forces to work. The Commission should take a cautious approach and adopt the cellular MSAs and RSAs. To the extent that a larger number of service areas creates additional administrative burden for the Commission, which could ultimately delay the licensing and introduction of PCS, Sprint recommends that the application fees be set at a level high enough to fund the required administrative resources.

Moreover, there are significant disadvantages to larger service areas which should be recognized. National, LATA and MTA service areas will concentrate market power in the hands of a relatively small number of companies. There will be fewer entrants, and many smaller, innovative entrepreneurs will be squeezed out of the PCS market at the outset. The absence of such smaller entrepreneurs may well result in a decrease in product and service innovation and this will, in turn, result in lower quality service. The licensees will be less driven to meet the needs of consumers, and service is likely to be of a lower quality. Similarly, there will be less incentive to experiment with technologies and to develop technologies that minimize costs.

The larger service areas will also unreasonably disadvantage existing cellular service providers which have smaller licensing areas. If cellular providers are excluded from those areas in which they have licenses, an existing provider might be excluded from a larger service area because it has a license or licenses which cover only a small part of that service area. Congruence with cellular service areas would, in contrast, minimize cellular eligibility complications and thereby maximize the participation of experienced and viable competitors.

These concerns make the award of a "national license" particularly inappropriate. Although the LATA and MTA options are not as restrictive as nationwide licenses, both will also limit the number of potential competitors. Further, the LATAs were created long before PCS was contemplated, without regard to the characteristics and needs of mobile customers.

Although there are advantages and disadvantages to any size serving area that are difficult to evaluate prior to actual market experience, Sprint believes that, on balance, smaller serving areas will foster greater competition, and the benefits of such competition will outweigh the costs of possible future consolidation. If the Commission does not, as Sprint suggests, adopt service areas equivalent to cellular MSAs and RSAs, Sprint strongly urges that the Commission use the 487 "Basic Trading Areas" ("BTAs") as an alternative. While the use of BTAs is admittedly a second-best solution, it is certainly far more appropriate--as explained above--than the other options put forth by the Commission.

IV. ELIGIBILITY REQUIREMENTS SHOULD BALANCE COMPETITION WITH TECHNOLOGICAL AND ECONOMIC EFFICIENCY.

The Commission's eligibility requirements for PCS licenses should be designed to ensure wide participation in delivery of personal communications services, fostering a robust competitive environment which encourages innovation, high quality service and lower prices. The Commission expresses concern about potential anticompetitive effects if cellular incumbents are permitted to acquire PCS licenses and states that incumbents may have an incentive to limit entry by new providers if they are permitted to apply for PCS licenses within their current service areas (at para. 64). The Commission should tailor its eligibility requirements specifically to encourage competition, and thus achieve lower prices, and better, more innovative services. As described below, the Commission should permit filing of PCS applications from parties with non-controlling interests in cellular

providers, or by providers whose interests do not represent a threat to competition in that market.

A. The Non-Controlling Ownership Standard Should Be Revised.

Sprint suggests that the Commission's eligibility standards should include an evaluation of whether an applicant controls a particular cellular or PCS licensee through majority ownership, voting control or other means. The Commission's suggestion that the standard for ownership and minority interests set forth in Section 22.921 of its rules be employed for PCS licenses is overly restrictive (see footnote 46). The one or five percent (for publicly traded companies) minority ownership standards are not appropriate for competitive markets that will have at least five or possibly more service providers (2 cellular, 3 or more PCS providers, and possibly 1 SMR provider). Sprint recommends that the Commission adopt a rule allowing non-controlling minority ownership interest of up to 30 percent.

The Commission should not be concerned about an existing cellular carrier's interest in a PCS license applicant, if the firm's equity interests are below 30 percent and do not enable it to exert control over the cellular carrier. For example, if Company A has a 30 percent non-controlling interest in Cellular Carrier B which has a presence in Market Area C, then Company A also should be able to invest in a PCS applicant, or apply for a PCS license, in Market Area C, because Company A's non-controlling interest in Cellular Carrier B represents no threat to competition in Market Area C.

The Commission should require applicants to establish eligibility in the application documents by fully disclosing all details regarding ownership and relationships to other licensees, including an exhibit explaining why control does not exist, and how the test for control was applied. If an application is tentatively selected in the lottery process, other parties would be free to attempt to rebut the presumptions regarding control and/or lack of anticompetitive impact in a particular market.

By allowing PCS applications from parties with non-controlling interests in cellular providers whose interests in particular markets do not represent a threat to competition in that market, the Commission will establish an appropriate public interest balance for PCS eligibility. Adopting the suggested policy will mitigate the risk of anticompetitive behavior while allowing investment by firms which may be willing to provide start-up capital to new entrants in a new part of the telecommunications industry.

B. Cellular Applicants With Minor Proportional Market Interests Should Be Eligible.

Computation of proportional market interest in a PCS applicant would be complicated if the Commission establishes PCS market areas different than those used for cellular. The NPRM does not discuss what effect the possible difference between cellular and PCS market areas might have in terms of competitive impact, nor is there much discussion about non-controlling interests in cellular licenses, or interests which are minor in relation to the total population of the market area. Sprint offers a specific proposal to address this issue.

If the Commission decides to create PCS service areas that are larger than cellular's MSA/RSAs, it should adopt eligibility rules appropriate to the larger market size. The Commission should permit cellular carriers and their affiliates to obtain PCS licenses where their presence does not raise a serious possibility of competitive harm. Sprint recommends an approach similar to that made by Wayne Schelle, Chairman of American Personal Communications in a letter to Chairman Sikes dated September 17, 1992.

Sprint suggests that if a service area larger than MSA/RSA is adopted (such as BTAs), that the Commission establish eligibility for cellular providers by determining the percentage of POPs within a total service area that is served by the cellular carrier (based on counties that overlap), and then multiplying that percentage by the ownership percentage the cellular provider holds in the cellular licenses that overlap the PCS service area. If the proportional market interest (i.e., the product of this calculation) is less than the 30 percent standard, the cellular provider should be eligible to apply for that PCS market. Adoption of such a formula is in the public interest because it fairly balances the need for additional services and expertise against any potential competitive harm, by permitting participation by cellular providers whose interests in the larger market market area is too small to adversely affect competition.

C. Local Exchange Companies Should Be Eligible To Apply For PCS Licenses Where Their Proportional Market Interest Is Minor.

The Commission tentatively concludes that the LECs should not be proscribed from providing PCS within their respective

service areas (at para. 75). Sprint agrees that the only prohibition upon LEC participation in the PCS licensing process should be based upon an impermissible proportional market interest in a cellular provider, as defined by the formula Sprint suggests above. No other restrictions are warranted.

Participation of the LECs will benefit consumers by allowing LECs to develop innovative and lower cost services. However, the 10 MHz block of spectrum the Commission proposes that the LECs be allocated is insufficient for the LECs to develop a competitive PCS service. If the Commission decides to allocate 30 MHz of spectrum to other PCS providers, LECs should be eligible to apply for the same amount of spectrum. LECs should be permitted the same flexibility as other potential PCS providers to develop a wide range of diverse PCS applications, offering innovative new possibilities in the local exchange.

V. A 90 MHZ SPECTRUM ALLOCATION FOR THREE PROVIDERS IS NECESSARY TO PROVIDE A WIDE RANGE OF SERVICES AND TO MEET CONSUMER NEEDS.

Sprint agrees with the Commission's tentative conclusion that an initial 90 MHz allocation of spectrum sufficient to support a minimum of three service providers per market "is necessary to ensure a wide and rich range of PCS services that meet consumer needs at reasonable prices" (at para. 34). As the NPRM describes, it is important that each PCS licensee be provided with comparable spectrum to existing mobile service operators in order to provide competitive service offerings to customers. Sprint believes that 30 MHz of spectrum is necessary to

provide such competitive offerings. Thus, 90 MHz of spectrum, as proposed by the Commission, will accommodate three licensees.

Sprint supports the Commission's proposed allocation of 90 MHz of spectrum within the 1850-1990 MHz band for three licensees (at para. 37). Allocation of the required 90 MHz within an existing band will probably result is less delay than the allocation within multiple existing bands. The Commission is already addressing issues related to reassigning users in this spectrum band (see First Report and Order and Third Notice of Proposed Rulemaking in ET Docket No. 92-9, released October 16, 1992). If multiple bands are used, provisions will have to be made to share or relocate users in those bands, thereby delaying the introduction of PCS.

The Commission notes that "[b]locks of 20 MHz...would permit the Commission to license more competitors in the identified spectrum" (para. 36). Twenty MHz, however, will be insufficient to meet future demand with competitive offerings. PCS providers will be disadvantaged vis-a-vis providers of competitive services. Thus, this proposed option should be rejected.

VI. A PCS OPERATOR SHOULD HOLD NO MORE THAN ONE PCS LICENSE PER MARKET, BUT NOT BE LIMITED ON THE TOTAL NUMBER OF LICENSES IT CAN HOLD.

Sprint recommends that a specific standard be adopted that will prohibit holding any interest in more than one PCS license per PCS market area. Such a policy would foster competition and diversity within markets, and speed the introduction of service. Sprint does not support a case-by-case review of license holdings

--such approach would be cumbersome, as well as time-consuming and resource-depleting, and could lead to inconsistent decisions.

Sprint asserts that a simple license-based standard will be a clear, unequivocal guide to the market place that will be easy to administer and will maximize competition in each market.

The Commission should allocate sufficient spectrum per licensee so that a viable service offering can exist within the spectrum allocated at the outset (Sprint suggests that this amount be at least 30 MHz). Such approach will avoid pressure for consolidations within market areas.

VII. QUALIFIED LOTTERIES SHOULD BE THE LICENSING MECHANISM.

A. Comparative Hearings And Competitive Bidding Would Slow Introduction Of PCS.

Sprint agrees with the Commission's tentative conclusion that comparative hearings for PCS would be too costly, and would result in significant delays for implementing service to the public. It would be difficult and time consuming for the Commission to develop a comprehensive set of comparative criteria, especially for proposals which may include many diverse service offerings. Even if appropriate criteria could be developed, the existence of such criteria could limit innovation in service proposals, because applicants would try to tailor proposals to regulatory comparative criteria in order to obtain licenses, when other technical, marketing or financial considerations might be more important in providing quality service and innovative products to public.

At this point in time, competitive bidding also is not feasible, because no enabling legislation has been enacted to

permit competitive bidding, and the time lag between passage of such legislation, and related rulemaking proceedings to implement any such legislation could create delays as well.

B. Sprint Supports Qualified Lotteries.

A qualified lottery is the better approach for licensing PCS, and one that Sprint supports. However, the Commission's experience with lotteries in the past several years has shown that lotteries carry their own risks--for example, the ease of entry in a lottery that lacks qualification criteria tends to encourage unqualified speculators.

Relatively short filing windows (perhaps 60 days) with reasonable notice, reasonable application fees, and clear filing instructions also could limit "application mills" and produce a higher proportion of serious applicants, and reduce confusion in the lottery process.

The Commission should conduct only one lottery for each market area, and designate tentative selectees equal to the number of licenses available in each market. For example, if the Commission decides to award three licenses per market, three lottery winners should be selected in the lottery for each market. If, upon review, one or more of the selectees is found not to possess the basic legal, financial and operational qualifications to be a Commission licensee, then the Commission should hold another lottery amongst the remaining applicants for a license in that particular market area. The "contingent winner" procedure, whereby a "first runner up" is selected at the initial lottery, should not be employed, because, as the Commission

discusses, such procedure creates unnecessary delay and expense (see para. 86).

Sprint does not support "resale" limitations (prohibiting winning applicants from transferring licenses to an eligible entity, upon approval of the Commission). Although such restrictions would appear to limit speculation, it also could serve to delay PCS service to the public. In today's business climate, business plans and financial capabilities of various firms may change in response to a variety of different conditions, for many legitimate reasons. If the Commission disallows transfers, a personal communications system for a particular market area could remain unbuilt pending further Commission procedures to reassign the license to another applicant. The Commission should permit transfers, purchases of minority interests in applicants, and joint ventures. By remaining flexible, the Commission will expedite service to the public.

VIII. THE COMMISSION SHOULD PERMIT WIRELINE ELIGIBILITY FOR PCS IRRESPECTIVE OF REGULATORY CLASSIFICATION.

The NPRM requests comment upon the regulatory issues which would flow from classifying PCS as either common carriage or private land mobile radio service (at paras. 95-98). Sprint encourages the Commission to permit applications by carrier currently offering common carrier services, or their affiliates, irrespective of the regulatory classification of the service.

The NPRM says that there is "a strong case for allowing LECs to provide PCS service" (at para. 75). As noted in Section IV above, LECs should be eligible to provide PCS, and the Commission should adopt rules to permit such service. The proposed rules

are attached to the NPRM as Appendix A. The Commission proposes to create a new section of the rules, Part 99, under which it will license and regulate personal communications services. Such an approach appears warranted. However, the proposed new Section 99.13, as currently written, restricts eligibility of wireline and cellular carriers to provide PCS service within their respective service areas. As this rule conflicts with the discussion in the text of the NPRM, perhaps the current wording of the rule was proposed in error. Sprint suggests that the rule be revised to reflect the eligibility criteria suggested by Sprint in Section IV above.

Common carriers, including LECs and cellular providers, should be eligible to provide PCS, whether PCS is regulated as private or common carriage. All personal communications services should be regulated on the same basis. Thus, if the Commission determines that personal communications services should be regulated as private carriage, all PCS should be regulated on such a basis whether or not such services are provided by an entity which also offers common carrier services (such as a local exchange or cellular carrier). For example, if the Commission adopts private carrier regulation for PCS, it would logically need to revise proposed Section 22.930, contained in Appendix A to the NPRM, striking "common carrier" from the phrase "Cellular system licensees may employ alternative cellular technologies and may provide auxiliary common carrier services including personal communications services (as defined in Section 99.3 of Part 99 of this chapter)..." (Appendix A at p. 79). There also may be other revisions the Commission may need to make to other parts of its

rules, particularly in Part 22. The Commission can examine further necessary revisions at a later date, either in a further phase of this proceeding, or another proceeding. Such review would be consistent with the public interest and the Commission's stated intention "to foster a market environment in which cellular and PCS licensees compete with a variety of telecommunications services, including cellular" (at para. 70).

Because the Commission intends to specify eligibility requirements for PCS in a new Part 99, prior restrictions on wireline eligibility to provide SMR service should have no relationship to LEC eligibility for PCS service. However, Sprint encourages the Commission to revise its Part 90 rules which restrict wireline eligibility for SMR service. Section 90.603(c) says that "any person, except wireline telephone common carriers" is eligible to provide service. Clearly this rule only addresses the eligibility of wireline carriers to provide SMR service, and not PCS, but if PCS and SMR are competitive, there no longer is sufficient rationale for continuing the restriction. The Commission recently terminated its proceeding in which elimination of the restriction had been proposed without addressing any of the comments filed in response to the Notice of Proposed Rulemaking (see Order in PR Docket No. 86-3, ("Order") 7 FCC Rcd 4398 (1992)). In its Order, the Commission states that the Commission will maintain the regulation "until the Commission has had an opportunity to create a record based upon the current status of the industry" (Order at para. 6). The Commission now has the opportunity to evaluate the current status of the industry--by reviewing comments filed in this proceeding, and using the record

established as the basis upon which to find that sufficient competitive environment now exists for wireless service offerings generally. Thus, the wireline restriction in Section 90.603(c) should be eliminated by Order in this proceeding as no longer necessary. The NPRM acknowledges that PCS can provide "a greater overall level of competition in many already competitive segments of the telecommunications industry" (at para. 4). The addition of several more competitors for wireless service offerings in each market should form a basis for eliminating the restriction.

The parties have had notice of the fact that the Commission is considering eligibility and regulatory classification requirements for new mobile/portable service offerings. Revision of the rule in this proceeding would comply with Section 553 of the Administrative Procedure Act (5 USC Section 553) because such action falls within the "logical outgrowth" test (whether a party should have anticipated that particular requirements might be imposed) enunciated in Aeronautical Radio, Inc. v. FCC, 928 F23d 428 at 446 (1991).

IX. INTERCONNECTION AND TECHNICAL STANDARDS.

Sprint agrees that PCS licensees should have a federally protected right to interconnect with the public switched network on a non-discriminatory basis. Standards should be developed in industry fora, and no specific type of interconnection should be mandated at present. PCS interconnection requirements should be established at the federal level, as the Commission tentatively concludes (at para. 103).

Sprint's comments regarding technical standards are contained in Appendix A.

Respectfully submitted,

SPRINT CORPORATION

Marybeth M. Banks

Its Analyst

Leon M. Kestenbaum
Phyllis A. Whitten
1850 M Street, N.W., Suite 1110
Washington, D.C. 20036
(202) 857-1030

Its Attorneys

November 9, 1992